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~~June~~ 15, 2012

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JUN 15 2012

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Contact in *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593

Colleen Boothby, counsel to the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), met with Priscilla Delgado Argeris, Angela Kronenberg, Christine D. Kurth, and Paul Murray on June 13 and 14, 2012, to discuss the contents of the attached written *ex parte* presentation. The *ex parte* presentation is in response to recent BOC assertions regarding the market for special access services and contains highly confidential information previously filed with the Commission pursuant to Protective Orders released in the docket captioned above.[1]

In compliance with these Protective Orders, one copy of the attached redacted version of the *ex parte* presentation is being filed electronically via ECFS, one original of the highly confidential version of the *ex parte* presentation is being filed with the Secretary's Office under separate cover, and two copies of the same will be delivered to Marvin Sacks of the Pricing Policy Division of the Wireline Competition Bureau.

If you have any questions regarding this submission, please do not hesitate to contact me directly.

Sincerely,

Amanda J. Delgado

Amanda J. Delgado
Legal Assistant
Levine, Blaszak, Block & Boothby, LLP

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[1] *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd.15168 (2010); *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd. 17725 (2010) (collectively, the "Protective Orders")

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cc via email: Priscilla Delgado Argeris
Angela Kronenberg
Christine D. Kurth
Paul Murray

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Re: *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") submits this letter in response to recent claims in various *ex parte* presentations by incumbent local exchange carriers ("ILECs") regarding the Commission's "pricing flexibility" rules and technology trends in the special access marketplace.[1]

Ad Hoc represents high-volume business customers of communications services and products. Ad Hoc has no carrier members, no carrier funding, and thus no carrier bias. Ad Hoc has participated since 1999 in a variety of Commission proceedings focused on the appropriate regulation of special access service, including the *Special Access Rulemaking* captioned above.

Ad Hoc has consistently urged the Commission to abandon its flawed "pricing flexibility" rules.[2] The glaring defect in the rules is that they measure competition for one network element (end office services) in order to de-regulate another (transmission services). Or, as Ad Hoc has described it, they take the cow's temperature to see whether the pig is sick. As a result, the rules have blocked de-regulation in competitive

[1] *See, e.g.,* Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory and Chief Privacy Officer, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25; WCB/Pricing File No. 12-05 (filed June 7, 2012) ("*AT&T June 7 Ex Parte*"); Letter from David L. Lawson, Attorney for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (filed March 28, 2012) ("*AT&T March 28 Ex Parte*"); Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25 (filed June 6, 2012) ("*Verizon June 6 Ex Parte*").

[2] 47 C.F.R. § 69.701, *et seq.*

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markets and imposed it in non-competitive markets. Worse yet, ILECs who received "pricing flexibility" have used it to raise their prices. Either price-constraining competition is missing in those de-regulated markets or the ILECs believe that the best way to attract customers away from competitors is to raise their prices. This pricing behavior is reason enough for the Commission to suspend the operation of the current rules pending investigation and more rigorous analysis.

Ad Hoc also views with concern recent *ex parte* statements about supposed technology shifts filed by ILECs who oppose the Commission's efforts to reform the "pricing flexibility" rules. For more than a decade, ILECs have repeated the same claim in their filings against special access reform: the "pricing flexibility" rules are necessary because special access markets are competitive. Now that they must file data to support that claim, they are relying on a new one: the "pricing flexibility" rules are necessary because special access networks are migrating abruptly to IP.

For example, AT&T recently announced that a "sea change" occurred in 2011 in the special access marketplace.[3] According to AT&T, "many special access customers, and especially wireless carriers, made major, strategic commitments to a large-scale shift from TDM to Ethernet. This irreversible shift to Ethernet became the overriding feature of the marketplace in 2011, and legacy TDM services have now entered a period of permanent decline."[4] Therefore, according to AT&T, the FCC cannot rely on the evidence carriers filed just last year regarding the level of special access competition. So much supposedly changed in only a year that "the data the Commission has collected is already out of date."[5] Similarly, Verizon claims that "[t]he marketplace for high-capacity services is changing rapidly" because it "is undergoing a fundamental shift away from TDM-based DS1 and DS3 special access services as customers look to newer technologies."[6]

AT&T made this same claim two and a half years ago – a year before the supposed "sea change" that occurred last year. In its January, 2010 Comments in this docket, AT&T argued that DS1/DS3 services do not merit analysis by the Commission because they are technologically obsolete and commercially irrelevant in today's marketplace. Just as it does today, AT&T claimed that customer demand had shifted, and soon would be shifting, elsewhere.[7] Just as it does today, AT&T claimed that the "services at issue here are rapidly being replaced," that they are "ill-suited to meet the

[3] *AT&T March 28 Ex Parte*

[4] *Id.* at 1.

[5] *Id.* at 2.

[6] *Verizon June 6 Ex Parte* at 5.

[7] Comments of AT&T Inc. (filed January 19, 2010) ("*AT&T Comments*") at 1-3, 13.

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exploding demand for higher-capacity broadband connections,"[8] and that the Commission was wasting time and resources on this docket when "all of the available evidence indicates that those services are going the way of the dodo."[9]

In fact, the data filed by AT&T itself in this docket proves precisely the opposite. In AT&T's response to the Commission's second voluntary data request,[10] AT&T reports that these very services produced [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] in revenue[11] in 2010, the year *after* AT&T first announced that the services were "going the way of the dodo." Assuming a conservative 5-10% growth rate in AT&T's total special access revenues since it reported them for the last time in 2007, the [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] that AT&T collects for these "dodo" services accounts for an astonishing [BEGIN HIGHLY CONFIDENTIAL] [redacted] [END HIGHLY CONFIDENTIAL] of AT&T's total special access revenues.[12] Far from being irrelevant, these services continue to dominate the product landscape and remain the essential (and most common) building blocks of enterprise customer networks.

AT&T's new claim is not only undermined by its own filed data but also contradicted by the actual marketplace experience of customers like Ad Hoc's members. Ad Hoc first reported that experience to the Commission in Reply Comments filed February 24, 2010 in this docket in response to AT&T's "dodo" characterization of special access.[13] Ad Hoc members reported then that they relied heavily on DS1/DS3 services and planned to do so for the foreseeable future. And they had the following to say about AT&T's claim that DS1/DS3 services were being replaced wholesale by IP technologies like Ethernet:

- "We have about 20,000 T1 dodos and <100 DS3 dodos. No immediate plans to abandon them to the wild."
- "We just received a response from [a major telecommunications company] to a global enterprise RFP for a new MPLS network in the US. 100% of the access lines proposed by [the company] were TDM (dodo?)."

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[8] *Id.* at 2.

[9] *AT&T Comments* at 13. AT&T variously refers to the services as "legacy TDM and copper-based services," "TDM-based DS1 and DS3 service," or "DSn-level services."

[10] Letter from Christopher Heimann, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-25; RM 10593 (filed December 14, 2011) ("AT&T December 14, 2012 Response to Second Data Request").

[11] *Id.* at Attachment 1, Response to Question B.1.

[12] AT&T reported $7.7b in *total* special access revenues in 2007. 2010 ARMIS 43.01, Table 1. Applying a conservative 5% annual growth rate to this amount, AT&T's total special access revenues at year end 2010 would have been $8.9b. At a 10% annual growth rate, they would have been $10.2b.

[13] Reply Comments of Ad Hoc Telecommunications Users Committee (filed February 24, 2010) at 3-5.

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- "Almost 95% of [my company's] domestic US data network are those 'circuits that nobody wants'."
- "We still completely rely on the services in question here.... Many companies still are running legacy PBX infrastructures which require these services, and companies that have transitioned to VoIP based systems also still primarily rely on these transport technologies for their customer interactions."
- "For data, [my company's divisions] in North America completely rely on TDM (DS3) services versus non-TDM services (all our factories, offices, call centers, etc)."[14]

In short, AT&T grossly mischaracterized the state of the marketplace with respect to demand for DS1/DS3 services in 2010. What AT&T called "dodos" were in fact the most common building blocks of corporate networks and will remain so for the foreseeable future.

Ad Hoc members had the same response to AT&T's latest Chicken Little moment. Ad Hoc asked its members whether they had experienced any wholesale shift from DS1/DS3s to Ethernet in 2011, as AT&T now claims, and they reported the following:

- "We did not replace any current DS3's with an Ethernet circuit, all the sites that had DS3's in 2011 still do. We currently have about 88 DS3's, none of which were moved to Ethernet. We have 46 or so Ethernet circuits, all of which were T1's and were upgraded, 30 or so of these were for a specific effort. Of our 18,000 T1's, none of these were moved to Ethernet. Ethernet is becoming more popular within [the company], but we are only utilizing it for upgrades since it seems to be more cost effective than moving to a DS3."
- "There was no blanket change of existing circuits from DS1/DS3 to Ethernet in 2011 and there is currently no strategy to change DS1/DS3 to Ethernet for the sake of changing. In the 160 offices in the field this change may happen over a five year cycle tied to real estate leases."
- "Absolutely not the case from [our] point of view. We still rely on DS-1s, DS-3s, OC-3s, OC-12s, OC-48s, and OC-768s for our network infrastructure."
- "We still have 700 T-1's and will have for the foreseeable future."

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[14] *Id.*

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- "While [we are] starting to utilize Ethernet for our datacenter to datacenter infrastructure, DS-1 and DS-3 services are still the norm throughout the entire client network."
- "[We] did not replace our DS1/DS3's with Ethernet. Our MPLS data network access links are DS1's/DS3's, SONET, OC3's provided by LECs."

As an organization of high-volume corporate customers, the Committee urges the Commission to reject the ILECs' anti-business, anti-competition agenda for special access reform and to suspend the "pricing flexibility" rules. In today's economic climate, business customers cannot afford a regulatory regime that allows ILECs with market power to grossly overcharge for services that are critical inputs for every business in America, large and small.

Sincerely,

Colleen Boothby

Colleen Boothby
Counsel, Ad Hoc Telecommunications Users Committee

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